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ABSTRACT

Reported are seven new court cases and updated information on 39 previously reported cases regarding the legal rights of the retarded. Analyzed are cases on the following topics (with sample cases in parentheses): classification (Steward, et. al. v. Philips, et al.); commitment (Pate v. Parham and White v. Director of Michigan Department of Mental Health); education (California Association for Retarded Children v. State Board of Education); employment (Roebuck, et al. v. Florida Department of Health and Rehabilitation Services, et al.); guardianship (Schultz v. Borradaile); sterilization (National Welfare Rights Organization, et al. v. Weinberger, et al.); treatment (Burnham v. Department of Health of the State of Georgia); voting (Carrole, et al. v. Cobb, et al.); and zoning (City of Temple Terrace v. Hillsborough Association for Retarded Citizens, Inc.). The final section lists 61 closed cases in the following areas: architectural barriers, classification, commitment, custody, education, employment, guardianship, protection from harm, sterilization, treatment, and zoning. (CL)

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MENTAL RETARDATION and the LAW

A Report on Status of Current Court Cases

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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DECEMBER 1975

This issue of "Mental Retardation and the Law," contains reports on 7 new cases (indicated as new in the text by an asterisk) and updated information on 39 cases reported in the September 1975 comprehensive issue of "Mental Retardation and the Law."

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of the Assistant Secretary for Human Development
President's Committee on Mental Retardation
Washington, D.C. 20201 U.S.A.

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I. CURRENT CASES

A. CLASSIFICATION

Massachusetts: Stewart, et al. v. Philips, et al., Civil Action No. 70-1199-F (U.S. D. Ct., Mass.), filed September 14, 1970.

The law suit is presently dormant while the parties oversee implementation of new legislation which, if implemented properly, would provide plaintiffs the relief they sought in this case.

B. COMMITMENT

District of Columbia: Poe v. Weinberger, No. 74-1800 (U.S. D. Ct., D.C.), filed December 10, 1974.

Cross motions for summary judgment have been pending for several months before a three-judge court; however, a hearing date has yet to be set.

District of Columbia: United States v. Shorter (Superior Ct., D.C.), decided November 13, 1974. No. 9076 (D.C. Ct. of Appeals), decided August 26, 1975.

Recognizing that the treatment of the mentally retarded and the mentally ill is quite different, the District of Columbia Court of Appeals nevertheless reversed the trial court and ordered that Mr. Shorter be committed to a hospital for the mentally ill. The court reasoned that the commitment was only temporary and of limited duration for purposes of evaluation and for determination of a proper course of treatment.

Georgia: Pate v. Parham.*

Named plaintiff in this suit is a 23-year-old mentally retarded man with no criminal record who was accused of molesting a minor. On July 2, 1970, he was found incompetent to stand trial and was indefinitely committed to the state's maximum security mental hospital.

Plaintiff sues on his own behalf and on behalf of all others similarly situated. Relying on the United States Supreme Court opinion in Jackson v. Indiana, 406 U.S. 715 (1972), he alleges a denial of due process and equal protection. In Jackson, the Supreme Court held that a person committed on the basis of incompetency to stand trial may only be held for a reasonable time necessary to determine whether there is a substantial probability that competency will be attained: If it is determined that the person is unlikely to become competent, then the state must either institute civil commitment proceedings or release the person.

Michigan: White v. Director of Michigan Department of Mental Health,* No. 75-10022 (E.D. Mich.), filed August 6, 1975.

Plaintiffs in this case challenge the constitutionality of a Michigan statute which allows minors to be admitted to mental hospitals solely on the consent of parents.

The court has ruled that a three-judge court should be convened to hear the suit.

Defendants' motion to dismiss portions of the complaint on mootness grounds has been denied. The court held that even though the named plaintiff was not in a mental institution when the suit was instituted, the damages requested plus the possibility of re-commitment rendered the question of the constitutionality of the statute a justiciable one.

Pennsylvania: Bartley, et al. v. Kremens, et al., Civil Action No. 72-2272 (U.S. D. Ct., E.D., Pa.), decided July 24, 1975.

On November 17, 1975, the court issued, without dissent, an Order to provide and implement the declaratory and injunctive relief to which plaintiffs were held entitled in the court's July 24, 1975 opinion.

In the November Order, the court ruled, inter alia, that all children who were committed pursuant to the unconstitutional statutes must be released within 120 days, unless they are recommitted pursuant to constitutional procedures.

Defendants have appealed both the July and November decisions to the United States Supreme Court.

On December 1, 1975, defendants' application for stay pending appeal was denied by the three-judge district court.

Pennsylvania: Mersel v. Kremens,* No. 74-159 (U.S. D. Ct., E.D. Pa.), decided August 20, 1975.

Plaintiffs in this class action challenged the constitutionality of a portion of the Pennsylvania Mental Health and Mental Retardation Act of 1966, which provides for the summary revocation by directors of state mental health facilities of leaves of absence granted to patients in those facilities.

On August 20, 1975, the district court, finding that the statute was "almost completely devoid of the due process of law required by the Fourteenth Amendment," held the statute unconstitutional, null and void.

The court ordered the parties to submit proposed forms of order consistent with its opinion, and scheduled a hearing for October 31, 1975. The court stayed execution of its judgment until further notice.

C. EDUCATION

Arizona: Eaton, et al. v. Hinton, et al., Civil Action No. 10326 (Superior Ct., Ariz.), filed December 10, 1974.

Plaintiffs have filed a motion for certification of the classes.

California: California Association for Retarded Children v. State Board of Education, No. 237277 (Superior Ct., Sacramento County), filed July 27, 1973.

No new developments since September, 1975 issue of "Mental Retardation and the Law."

Colorado: Colorado Association for Retarded Children v. The State of Colorado, Civil Action No. C-4620 (U.S. D. Ct., Colo.).

On October 7, 1975, a three-judge panel ruled on the motions for summary judgment, or in the alternative, for dismissal, filed by nine of the eleven school district defendants.

The court dismissed, without prejudice, the action as to three of the school districts, based on plaintiffs' concession that there were no longer any plaintiffs with standing to bring suit against them.

The suits against five other school districts were dismissed, without prejudice, as moot. The court found that those districts: (1) have implemented or substantially implemented the Colorado Handicapped Children's Education Act and are making substantial progress toward providing adequate, meaningful education programs for all handicapped children; (2) have established adequate due process procedures for the placement of handicapped children; and (3) have made available to the named plaintiffs suitable public education programs. The court answered plaintiffs' claim that the issue of compensatory education still remains as to the five districts by stating:

> "...we are satisfied that the State Department of Education and the State Department of Institutions, in concert with the school districts, will continually use their best efforts, commensurate with budgeting and staff limitations, to provide those children who were deprived of public education in the past with remedial measures to enable them to attain their full educational potential."

The court denied the motion to dismiss of one school district. The court ruled that there still exists a justiciable controversy as to that school district since,

> "...there remains some question as to whether Denver is making as concerted effort as possible to locate and provide

adequate education commensurate with the needs of all handicapped children within its boundaries."

The court, on its own, dismissed as defendants the State of Colorado and its Governor.

The three remaining school district defendants and each of the remaining state defendants were ordered to file reports by January 1, 1975, reflecting the progress made toward implementation of the Education Act.

Illinois: C.S., et al. v. Deerfield Public School District #109, Civil Action No. 73 L 284 (Circuit Ct., Nineteenth Judicial Circuit, Lake County, Ill.).

No new developments since September, 1975 issue of "Mental Retardation and the Law."

Illinois: W.E., et al. v. Board of Education of the City of Chicago, et al., Civil Action No. 73 CH 6104 (Circuit Ct., Cook County, Ill.).

Defendants' motion to dismiss was granted without opinion on July 30, 1975.

Plaintiffs filed a notice of appeal in August, 1975, and are presently preparing their brief.

Indiana: Dembrowski v. Knox Community School Corporation, et al., Civil Action No. 74-210 (Starke County Ct., Ind.), filed May 15, 1974.

No new known developments since September, 1975 issue of "Mental Retardation and the Law."

North Carolina: North Carolina Association for Retarded Children, Inc., et al. v. The State of North Carolina Board of Public Education (U.S. D. Ct., E.D. N.C.), filed May 18, 1972.

The United States, a plaintiff intervenor, has filed an amended complaint which expands this right to education suit to now include sterilization and right to treatment issues.

North Dakota: North Dakota Association for Retarded Children v. Peterson (U.S. D. Ct., N.D.), filed November, 1972.

The law suit is presently dormant while state legislation which provides for virtually all of plaintiffs' demands is being implemented.

Ohio: Cuyahoga County Association for Retarded Children and Adults, et al. v. Essex, No. C 74-587 (U.S. D. Ct., N.D., Ohio).

Plaintiffs have filed a motion for partial summary judgment which seeks to test the constitutionality of the State of Ohio's allegedly discriminatory pattern of education.

Washington: Rockafellow, et al. v. Brouillet, et al., No. 787938 (Superior Ct., King County, Wash.).

Defendants have cross-appealed the trial court's finding that plaintiffs stated a cause of action.

Argument of the appeal and cross-appeal is scheduled for February 23, 1976, before the Supreme Court of Washington.

D. EMPLOYMENT

Florida: Roebuck, et al. v. Florida Department of Health and Rehabilitation Services, et al., 502 F.2d 1105 (5th Cir. 1974).

The trial court has denied motions by defendants to dismiss and to convene a three-judge court. No trial date has yet been set.

Indiana: Sonnenburg v. Bowen, No. 74 P.S.C. 1949 (Porter County Circuit Ct., Ind.), filed October 9, 1974.

A motion for summary judgment filed by defendants is scheduled for argument on December 18, 1975.

Ohio: Souder v. Donahey, et al., No. 75222 (Supreme Ct., Ohio).

The case was set for oral argument before the Ohio Supreme Court on November 19, 1975.

Ohio: Walker v. Gallipolis State Institute,* Case No. 75CV-09-3676, (Court of Common Pleas, Franklin County, Ohio), filed September 5, 1975.

Named plaintiff in this suit is a resident employee of the Gallipolis State Institute, Gallipolis, Ohio, an institution operated by the Ohio Department of Mental Health and Mental Retardation for treatment of persons who are mentally retarded or mentally ill.

Defendants are the Ohio Department of Mental Health and Retardation and the State of Ohio.

Plaintiff sues on his own behalf and on behalf of all other similarly situated employees of the Ohio Department of Mental Health and Mental

Retardation to recover unpaid minimum wages, overtime compensation, liquidated damages, attorneys' fees, and costs under the provisions of Section 16(b) of the Fair Labor Standards Act as amended, 29 U.S.C. § 216(b).

The named plaintiff alleges that from 1967 until December 31, 1974 he worked at least 40 hours per week as a clerk and bookkeeper at the Gallipolis State Institute. He further alleges that he was compensated at a rate of only $.15 per hour, in violation of the Fair Labor Standards Act. He sues for $18,720 in unpaid minimum wages and liquidated damages, as well as attorneys' fees and costs.

Plaintiff has filed a motion for an appointment of a guardian ad litem to prosecute the case on his own behalf and on behalf of all others similarly situated. Plaintiff alleges that a guardian is necessary to avoid the conflicts created by the fact that: (1) under Ohio law, an involuntary commitment to a state institution acts as an adjudication of incompetence, thus persons committed to an institution may only consent to suit through a guardian; and (2) in the majority of cases, the superintendent of the institution to which an individual is committed is named as guardian. Plaintiff claims that a guardian is necessary, since in the present posture potential plaintiffs must rely on defendants and defendants' agents to inform them of their rights and to press their claims.

Defendants have filed a motion to dismiss the complaint or in the alternative to stay further proceedings until the decision in Souder v. Donahey (reported above).

Responses to both plaintiffs' and defendants' motions are due on November 17, 1975.

Tennessee: Townsend v. Clover Bottom, No. A-2576 (Chancery Court, Nashville, Tenn. 1974). Denial of defendants' motion to dismiss affirmed, 513 S.W.2d 505 (Tenn. Supreme Court 1974), appeal dismissed and certiorari denied June 9, 1975, 43 U.S.L.W. 3642 (No. 74-487). Application by state for stay of judgment denied by Mr. Justice Stewart, June 23, 1975.

A petition by the state for rehearing in the United States Supreme Court has been denied.

The case will be tried in the state Chancery Court on the issue of damages in approximately February or March of 1976.

Wisconsin: Weidenfeller v. Kidulis (U.S. D. Ct., E.D. Wis.), filed August 21, 1974. Order, 380 F. Supp. 445.

In November, 1975, the parties entered into a consent agreement which provided:

1. that the defendants and third-party plaintiffs will not in the future allow disabled patients of their nursing homes to perform any janitorial or maintenance service without such compensation as would comply with federal minimum wage laws, except where the patient does work that is solely therapeutic and of no consequential benefit to any of the defendants and third-party plaintiffs;

2. that the defendants shall pay $4,000 to the plaintiffs within ten days.

E. GUARDIANSHIP

Michigan: Schultz v. Borradaile, No. 74-40123 (U.S. D. Ct., E.D., Mich.), filed October 25, 1974.

The hearing which was expected in the fall of 1975 has not as yet been held.

The National Center for the Law and the Handicapped and the National Senior Citizens Law Center have moved to participate in the case as friends of the court.

F. STERILIZATION

District of Columbia: Relf v. Weinberger; National Welfare Rights Organization, et al. v. Weinberger, et al., Civil Action No. 1557-73 and No. 74-372, 372 F. Supp. 1196 (U.S. D. Ct., D.C., 1974).

In an opinion dated October 22, 1975, Judge Gesell denied defendants' motion for modification of his March 15, 1974 order. In the same opinion, Judge Gesell denied, as stale, plaintiffs' motion for enforcement. The denial was without prejudice to refiling on the basis of updated facts.

The record has now been returned to the Court of Appeals where cross-appeals on the Order are pending.

North Carolina: Cox v. Stanton, et al., Civil Action 800 (U.S. D. Ct., E.D., N.C.), filed January 18, 1974.

Finding that the district court incorrectly applied the statute of limitations and further finding that plaintiff's damages claims were not time-barred, on October 6, 1975, the Fourth Circuit reversed the district court's dismissal of this suit and remanded for further proceedings on the damages issue.

The Fourth Circuit upheld the district court's dismissal of plaintiff's claim for a judgment declaring the North Carolina sterilization statute

unconstitutional. The District Court had dismissed on standing grounds The Fourth Circuit, however, held that the issue is moot since a new sterilization statute has been enacted.

The parties are now engaged in discovery.

North Carolina: Trent v. Wright (U.S. D. Ct., E.D., N.C.), filed January 18, 1974.

Now that the statute of limitations issue has been resolved in Cox v. Stanton (see above), discovery is proceeding in this case.

G. TREATMENT

District of Columbia: Dixon v. Weinberger, No. CA-74-285 (U.S. D. Ct., D.C.), filed February 14, 1974.

No further developments since September, 1975 issue of "Mental Retardation and the Law."

Florida: O'Connor v. Donaldson, 422 U.S. ___, 95 S. Ct. 2486 (43 U.S.L.W. 4929, June 26, 1975), 493 F.2d 507 (5th Cir. 1974).

On August 5, the Fifth Circuit Court of Appeals held that the trial court's instructions to the jury as to O'Connor's liability for compensatory and punitive damages were insufficient. Plaintiff filed a motion with the Fifth Circuit urging reconsideration of the remand order.

On October 9, the Fifth Circuit, without opinion, denied Plaintiff's petition for rehearing. Accordingly, the damages issue is now remanded to the federal district court in Tallahassee, Florida for summary disposition or for trial. On October 28, Plaintiff wrote a letter to the district judge requesting a chambers conference to clarify the particular damages issue or issues that remain to be tried or re-tried. No date for such a conference has yet been scheduled.

Georgia: Burnham v. Department of Health of the State of Georgia, 349 F. Supp. 1335 (N.D. Ga. 1972), 503 F.2d 1319 (5th Cir. 1974), cert. denied, ___ U.S. ___, 43 U.S.L.W. 3682 (1975).

No new known developments since September, 1975 issue of "Mental Retardation and the Law."

Maine: Wuori v. Burns,* D. Ct., Me., filed August 22, 1975.

Plaintiffs in this right to treatment suit are residents of Pineland Center, a Maine state institution for the retarded.

Plaintiffs, alleging that the institution has failed to meet their need for care, education, training and therapy in a humane and healthful

physical and psychological environment, seek declaratory and injunctive relief.

Maryland: Bauer v. Mandel,* No. 22-871 (Anne Arundel County Circuit Ct.), filed September, 1975.

This case was filed following the federal court abstention order in Maryland Association for Retarded Children v. Solomon.

The complaint is virtually identical to the federal complaint with emphasis in three areas:

1. the obligation of the state to provide less restrictive alternatives;

2. procedural due process issues with respect to commitment and retention; and

3. the right to treatment.

Alleging a failure to state a cause of action, defendants have filed a motion to dismiss.

A hearing on the motion is not expected until the spring of 1976. In the meantime, discovery is proceeding.

Maryland: Maryland Association for Retarded Children v. Solomon, No. N-74-288 (U.S. D. Ct., Md.).

In April, 1975, the United States District Court entered an abstention order. The suit has now been refiled in state court under the name of Bauer v. Mandel.

Maryland: United States v. Solomon, No. N-74-181 (U.S. C. Ct., Md.), filed February 21, 1974.

This right to treatment suit was filed by the Office of Special Litigation, Civil Rights Division, on behalf of the United States, to redress the alleged deprivation of the civil rights of residents of the Rosewood Center, a Maryland facility for the mentally retarded.

This case is in a pretrial stage; however, discovery is nearly completed

Michigan: Jobes, et al. v. Michigan Department of Mental Health, No. 74-004-130 DC (Cir. Ct., Wayne County, Mich.), filed February 19, 1975.

In an opinion dated January 24, 1975, Judge Victor Baum:

(1) ruled that the suit would not be permitted to proceed as a class action, but rather would be limited to the claims of the two named plaintiff children;

(2) dismissed for lack of actual controversy plaintiffs' claim concerning admission to state hospitals;

(3) dismissed plaintiffs' claim concerning access to records and documents related to research and experimentation;

(4) severed any remaining claims of plaintiff taxpayers from those of the named plaintiff children, and ruled that the claims of the taxpayers be limited to showing a genuine economic advantage and interest in the discontinuance of the allegedly unlawful research and experimentation;

(5) denied defendants' motions for summary judgment on named plaintiff children's research and experimentation claims;

(6) denied costs to all of the parties.

On November 20, 1975, plaintiffs moved for summary judgment on the issue of medical research and experimentation. Plaintiffs based their motion on the fact that administrative rules, effectuated by the State Department of Mental Health in August, 1975, afford plaintiff children full relief. Plaintiffs seek judgment so that they will be protected if action is later taken to rescind the administrative rules.

R 330.7021, Research or treatment procedures which place recipients at risk, is reproduced below:

(1) A recipient shall not be the subject of a medical or social research or treatment procedure if the research or procedure places subject at risk, unless the requirements of this rule are met to insure the protection of the recipient.

(2) As used in this rule:

(a) "Subject at risk" means an individual who may be exposed to the possibility of injury, including physical, psychological, or social injury, as a consequence of participation as a subject in research or as a consequence of a treatment procedure which departs from application of established and accepted activities necessary to meet the indivudal's needs, or which increases the ordinary risks of daily life, including the recognized risks inherent in a chosen occupation or field of service.

(b) "Medical and social research or treatment procedures which place subjects at risk" include not yet accepted or established procedures, accepted and established procedures used in a manner other than recommended or prescribed, behavior modification involving use of noxious or aversive stimuli, electric shock, lobotomy, or other psychosurgical procedures, and organ transplants or other surgical procedures which are of other than therapeutic benefit to the recipient.

(3) Research or procedures which place a subject at risk shall not be conducted or sponsored by a provider unless a committee established by the facility director has reviewed and approved the activity.

(4) A recipient shall be the subject of a medical or social research or treatment procedure which place him at risk only if he is 18 years of age or over and competent, with his express and informed consent, and with an opportunity for consultation with legal counsel and independent medical specialists. Proposed research or procedures meeting the definition in rule (2b) shall be reviewed and approved by the committee before consent is sought.

(5) Recipients whose freedom and rights are, or potentially are, subjected to limitation may not be subjects of research unless a proposed activity is related to the etiology, pathogenesis, prevention, diagnosis, or treatment of mental disability or retardation or the management, training, or rehabilitation of the mentally disabled or retarded and seeks information which cannot be obtained from subjects who are not recipients.

(6) A review committed shall:

(a) Determine whether subjects would be placed at risk, and, if risk is involved, whether:

(i) Risks are outweighed by the sum of the benefit to subjects and the importance of the knowledge to be gained and thereby warrant a decision to allow subjects to accept these risks.

(ii) Rights and welfare of subjects shall be adequately protected.

(iii) Legally effective informed consent shall be obtained.

(iv) Conduct of the activity shall be reviewed at timely intervals.

(b) Be composed of not less than 5 persons with varying backgrounds sufficiently qualified through experience and expertise to ascertain the acceptability of proposals in terms of organizational commitments and regulations, applicable law, standards of professional conduct and practice, and community attitudes.

(c) Not review an activity in which 1 member has a conflict of interest, unless that member limits his activities in the proceeding to providing information requested by the committee.

(d) Not consist entirely of employees of the organization or of a single professional discipline.

(e) Be identified to the director of the department and the governing body by name; earned degrees, if any; position or occupation; representative capacity; and by other pertinent indications of experience such as board certification and licenses.

(f) Provide for periodic reviews not less than annually of ongoing research or procedures which place the subject at risk.

(g) Determine that an application or proposal contains adequate procedures for selection of subjects, securing consent, protecting confidentiality, and monitoring continued subject participation, through a consent committee.

(7) The director shall establish a consent committee which shall:

(a) Include sufficient members who are unaffiliated with the proposed research or procedure.

(b) Include sufficient members who are not engaged in research, or procedures which place subjects at risk.

(c) Oversee the process by which subjects are selected and consents secured.

(d) Monitor progress of the activity including regular visits to the activity site.

(e) Insure the continued willingness of subjects to participate and intervene on behalf of 1 or more subjects if conditions warrant.

(f) Carry out such other duties as the governing body may prescribe.

(8) Documentation of informed consent for research or procedures which place subjects at risk shall include:

(a) Evidence of a subject's assent to participation, when in the judgment of the consent committee he has sufficient mental capacity to understand what is proposed and to express an opinion as to participation even though not capable of legal consent.

(b) Written summaries which have received prior approval by the committee of what is said to the subject in seeking consent and a copy, signed by the person obtaining the consent and by a witness [sic].

(c) Records which include sample copies of the consent form and of the summaries as approved by the committee.

(9) Copies of documents related to initial and periodic review, by review or consent committees shall be retained by the provider.

(10) Research related information which identifies recipients shall only be disclosed in a manner consistent with disclosures of confidential information as specified in section 748 and 750 of the act and rule 7051.

(11) A recipient shall not be subjected to a behavior modification program designed to eliminate a particular pattern of behavior without prior certification by a physician who has examined the resident and has found that such behavior is not caused by a physical condition which could be corrected by appropriate medical procedures.

Minnesota: Welsch v. Likins, 373 F. Supp. 485 (U.S. D. Ct., Minn., 1974).

Defendant's motion requesting a three-judge court was argued on August 22, 1975. It is still under advisement by the court.

A further evidentiary hearing is scheduled for November 17, 1975, to determine whether conditions at Cambridge State Hospital warrant further relief.

Mississippi: Doe v. Hudspeth, No. J 75-36(N) (U.S. D. Ct., S.D., Miss.), filed February 11, 1975.

Discovery has been completed. A conference was scheduled for November 14, 1975 to set a trial date.

Montana: United States v. Kellner, Civil Action No. 74-1-138-BU (U.S. D. Ct., Mont.), filed November 8, 1974.

No new developments since September, 1975 issue of "Mental Retardation and the Law."

Nebraska: Horacek, et al. v. Exon, et al., Civil Action No. CU 72-C-299. Preliminary order, 357 F. Supp. 71 (D. Ct., Neb. 1973).

The parties entered into a proposed settlement agreement in August which is awaiting court approval.

The settlement agreement provides, inter alia, that

1. Mentally retarded persons have Federal Constitutional rights to adequate care and habilitation, on an individualized basis, that will provide a maximum opportunity to realize normal living and to cope with the environment;

2. A five-member panel shall be established to prepare a plan of implementation;

3. An evaluation team shall be created to review the programmatic needs of each resident of Beatrice State Home;

4. A statewide plan shall be established for supplementing present communtity-based programs;

5. A seven-member Consumer Advisory Board shall be created to participate in formulating goals and long-range plans for the treatment of the mentally retarded in Nebraska;

6. The resident population at the Beatrice State Home shall be reduced to 250 residents or less within three years of the date of entry of the decree.

Pennsylvania: Halderman v. Penhurst State School and Hospital, No. 74-1345 (U.S. D. Ct., E.D., Pa.), filed May 30, 1974.

Argument on defendants' motion to dismiss has not yet been scheduled.

A motion to compel interrogatories is also pending since defendants have resisted portions of discovery.

The motion of the Pennsylvania Association for Retarded Children to intervene as a party plaintiff has been granted.

On a protection from harm theory, plaintiffs filed a motion for a preliminary injunction to enjoin the acceptance of "street-wise" retarded delinquents as residents at the Penhurst facility. It was plaintiffs' position that such individuals were threatening the safety and preventing the treatment of other Penhurst residents and were themselves being denied appropriate treatment since they were more suited to non-institutional treatment. The parties stipulated to the facts, and on October 2, 1975, a preliminary injunction was entered.

Tennessee: Saville v. Treadway, Civil Action No. Nashville 6969 (U.S. D. Ct., M.D., Tenn). Decided March 8, 1974. Consent Decree, September 18, 1974.

On January 20, 1975, the Tennessee Department of Mental Health submitted to the court its deinstitutionalization-institutional reform plan.

In March, 1975, plaintiffs filed a motion to reset the case on grounds that the plan failed to implement the consent agreement and that it failed to return residents to the community at a sufficiently expeditious rate.

Plaintiffs' motion was denied by the court.

Washington: Boulton v. Morris, No. 781659 (Superior Ct., King County, Wash.), filed June, 1974.

The case is still in a pre-trial stage.

Washington: Preston v. Morris, No. 77-9700 (Superior Ct., King County, Wash.), filed April 23; 1974.

Trial is tentatively set for February or March, 1976.

Washington: White v. Morris, Nos. 67488 and 68250 (Superior Ct., King County, Wash.), decided August 1, 1975.

The civil action for writ of mandate against the Secretary of the Department of Social and Health Services was consolidated with the criminal action.

On August 1, 1975, following a hearing and after evaluating Mr. White's treatment needs, the court ordered the Department of Social and Health Services to pay for all costs of Mr. White's treatment at Victoria Village, a private, residential treatment program for retarded and emotionally disturbed young people. The court also authorized the Department to transfer Mr. White to the Cove, yet another treatment program, but ruled that should the state elect to transfer, a transition period of no more than 30 days must be utilized.

The court based its decision on statutory and constitutional rights to treatment, combined with a finding that the state's own programs fail to meet minimal constitutional standards with respect to Mr. White's treatment needs.

The Department has appealed the trial court's decision to the Washington State Court of Appeals. Pending appeal, money to cover the cost of treatment is being deposited with the clerk of the court.

H. VOTING

New Jersey: Carroll, et al. v. Cobb, et al., Civil Action No. L-6585-74-PW (Superior Ct., N.J.), decided November, 1974.

Oral arguments before the Appellate Division were heard on October 27, 1975.

I. ZONING

Florida: City of Temple Terrace v. Hillsborough Association For Retarded Citizens, Inc.,* 44 U.S.L.W. 2189 (Fla. Ct. App. 2d District), decided October 10, 1975.

In this case the trial court entered a judgment in which it found that even though a privately owned home for the retarded was contrary to the city's single-family residential zoning ordinance, the ordinance could not be enforced against the facility because its activities partook of the sovereign immunity of the State of Florida. Evidence at trial indicated that any retarded individual who is a client of the Division of Retardation, Department of Health and Rehabilitative Services is eligible to receive services at the home, and that the home is paid by the Division for each retarded person housed there. The evidence further showed that no application was made to the city for a zoning variance and that there were other areas in the community where the center

could have been established without violating the zoning ordinances.

The Florida Court of Appeals reversed the trial court decision. Employing a "balancing of interests" test, the court held:

> "When the state legislature is silent on the subject, the governmental unit seeking to use land contrary to applicable zoning regulations should have the burden of proving that the public interests favoring the proposed use outweigh those mitigating against a use not sanctioned by the zoning regulations of the host government...under normal circumstances one would expect the agency to first approach the appropriate governing body with a view toward seeking a change in the applicable zoning or otherwise obtaining the proper approvals necessary to permit the proposed use."

II. CLOSED CASES REPORTED IN EARLIER ISSUES OF "MENTAL RETARDATION AND THE LAW"

A. ARCHITECTURAL BARRIERS

District of Columbia: Urban League v. WMATA, Civil No. 776-72 (U.S. D. Ct., D.C.), decided October 9, 1973.

Maryland: Disabled in Action of Baltimore, et al. v. Hughes, et al., Civil Action No. 74-1069-HM (U.S. D. Ct., Md.).

Ohio: Friedman v. County of Cuyahoga, Case No. 895961 (Court of Common Pleas, Cuyahoga County, Ohio), consent decree entered November 15, 1972.

B. CLASSIFICATION

California: Larry P. v. Riles, No. C-71-2270 (U.S. D. Ct., N.D., Calif.), preliminary injunction order, 343 F. Supp. 1306 (1972), affirmed, 502 F.2d 963 (9th Cir. 1974); supplementary order, December 13, 1974.

Louisiana: Lebanks, et al. v. Spears, et al., consent decree, 60 F.R.D. 135 (U.S. D. Ct., E.D. La. 1973).

C. COMMITMENT

Indiana: Jackson v. Indiana, 406 U.S. 715 (1972).

West Virginia: State ex rel. Miller v. Jenkins, No. 13340 (Supreme Ct. of Appeals, W.Va. at Charleston), decided March 19, 1974.

Wisconsin: State ex rel. Matalik v. Schubert, 47 Wis.2d 315, 204 N.W.2d 13 (Supreme Ct., Wis. 1973).

Wisconsin: State ex rel. Haskins v. County Court of Dodge County, 62 Wis.2d 250, 214 N.W.2d 575 (Supreme Ct., Wis. 1974).

D. CUSTODY

Georgia: Lewis v. Davis, et al., Civil Action No. D-26437 (Superior Ct., Chatham County, Ga.), decided July 19, 1974.

Iowa: In the Interest of Joyce McDonald, Melissa McDonald, Children, and the State of Iowa v. David McDonald and Diane McDonald, Civil Action No. 128/55162 (Iowa Supreme Court, October 18, 1972).

Iowa: In the Interest of George Franklin Alsager, et al. and the State of Iowa v. Mr. and Mrs. Alsager, Civil Action No. 169/55148 (Supreme Court of Iowa, October 18, 1972).

E. EDUCATION

California: Case, et al. v. State of California, Civil Action No. 101679 (Superior Ct., Riverside County).

Connecticut: Kivell v. Nemoitan, et al., No. 143913 (Superior Ct., Fairfield County, Conn.), decided July 18, 1972.

District of Columbia: Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (U.S. D. Ct., D.C. 1972). Supplemental Orders on Contempt and Master, March and July, 1975.

Florida: Florida Association for Retarded Children, et al. v. State Board of Education, Civil Action No. 730250-CIV-NCR (U.S. D. Ct., S.D., Fla.).

Florida: Florida ex rel. Stein v. Keller, No. 73-28747 (Circuit Ct., Dade County, Fla.).

Florida: Florida ex rel. Grace v. Dade County Board of Public Instruction, No. 73-2874 (Cir. Ct., Dade County, Fla.).

Kentucky: Kentucky Association for Retarded Children v. Kentucky, No. 435 (U.S. D. Ct., E.D., Ky.), consent decree, November, 1974.

Maryland: Maryland Association for Retarded Children, Leonard Bramble v. State of Maryland, Civil Action No. 720733-K (U.S. D. Ct., Md.). In the Maryland State Court, Equity No. 77676 (Circuit Ct. for Baltimore County), decided April 9, 1974.

Michigan: Harrison, et al. v. State of Michigan, et al., Civil Action No. 38557 (E.D., Michigan).

New York; Reid v. Board of Education of the City of New York, No. 8742 (Commission of Education for the State of New York), decided November 26, 1973. Federal Court Abstention Order, 453 F.2d 238 (2d Cir. 1971).

North Carolina: Hamilton v. Riddle, Civil Action No. 72-86 (Charlotte Division, W.D., N.C.).

North Dakota: In re G.H., Civil Action No. 8930 (Supreme Ct., N.D.), decided April 30, 1974.

Pennsylvania: Pennsylvania Association for Retarded Children, et al. v. Commonwealth of Pennsylvania, et al., 344 F. Supp. 1275 (3-judge Court, E.D., Pa. 1971).

West Virginia: Doe v. Jones (Hearing before the State Superintendent of Schools), decided January 4, 1974.

Wisconsin: Marlega v. Board of School Directors of City of Milwaukee, Civil Action No. 70C8 (U.S. D. Ct., E.D., Wis.), consent decree, September, 1970.

Wisconsin: Panitch, et al. v. State of Wisconsin, Civil Action No. 72-L-461 (U.S. D. Ct., Wis.).

Wisconsin: State of Wisconsin ex rel. Warren v. Nusbaum, ___ Wisc.2d ___, 219 N.W.2d 577 (Supreme Ct., Wis. 1974).

F. EMPLOYMENT

District of Columbia: Souder, et al. v. Brennan, et al., 367 F. Supp. 808 (U.S. D. Ct., D.C. 1973).

Iowa: Brennan v. State of Iowa, 494 F.2d 100 (8th Cir. 1973).

Maine: Jortberg v. Maine Department of Mental Health, Civil Action No. 13-113 (U.S. D. Ct., Maine), consent decree, June 18, 1974.

Missouri: Employees of the Department of Public Health and Welfare, State of Missouri v. Department of Public Health and Welfare of the State of Missouri, 411 U.S. 279 (1973).

Tennessee: Townsend v. Treadway, Civil Action No. 6500 (U.S. D. Ct., M.D., Tenn.), decided September 21, 1973.

G. GUARDIANSHIP

Connecticut: Albrecht v. Carlson, No. H-263 (U.S. D. Ct., Conn.), filed December 13, 1973.

Connecticut: McAuliffe v. Carlson, 377 F. Supp. 869 (U.S. D. Ct., Conn. 1974), supplemental decision, 386 F. Supp. 1245 (U.S. D. Ct., Conn. 1975).

Pennsylvania: Vecchione v. Wohlgemuth, 377 F. Supp. 1361 (U.S. D. Ct., E.D., Pa. 1974).

H. PROTECTION FROM HARM

New York: New York State Association for Retarded Children v. Carey, 393 F. Supp. 715 (E.D. N.Y. 1975), 357 F. Supp. 752 (E.D. N.Y. 1973).

New York: Rodriguez v. State, 355 N.Y.S.2d 912 (Court of Claims 1974).

Pennsylvania: Janet D. v. Carros, No. 1079-73 (Court of Common Pleas, Allegheny County, Pa.), decided March 29, 1974.

I. STERILIZATION

Alabama: Wyatt v. Aderholt, Three-judge District Court Order, January 20, 1973; District Court Order, January 8, 1974.

California: In re Kemp, 43 Cal. App. 3d 758 (Court of Appeals, 1974).

Missouri: In re M.K.R., 515 S.W.2d 467 (Supreme Ct., Mo. 1974).

Wisconsin: In re Mary Louise Anderson (Dane County Court, Branch I, Wis.), decided November, 1974.

J. TREATMENT

Alabama: Wyatt v. Hardin, 325 F. Supp. 781 (M.D. Ala. 1971), 344 F. Supp. 1341 (M.D. Ala. 1971), 344 F. Supp. 373, 387 (M.D. Ala. 1972), aff'd in part, modified in part sub nom. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

California: Revels, et al. v. Brian, M.D., et al., No. 658-044 (Superior Ct., San Francisco).

Hawaii: Gross, et al. v. State of Hawaii, No. 43090 (Circuit Ct., First Circuit, Hawaii).

Illinois: Nathan v. Levitt, No. 74 CH 4080 (Circuit Ct., Cook County, Ill.), consent order, March 26, 1975.

Illinois: Rivera, et al. v. Weaver, et al., Civil Action No. 72C135.

Illinois: Wheeler, et al. v. Glass, et al., 473 F.2d 983 (7th Cir. 1973).

Massachusetts: Ricci, et al. v. Greenblatt, et al., Civil Action No. 72-469F (U.S. D. Ct., Mass.), consent decree, November 12, 1973.

Missouri: Barnes, et al. v. Robb, et al., C.A. No. 75CU87-C (U.S. D. Ct., W.D., Mo.), filed April 11, 1975.

Ohio: Davis v. Watkins, 384 F. Supp. 1196 (U.S. D. Ct., N.D., Ohio 1975).

Pennsylvania: Waller v. Catholic Social Services, No. 74-1766 (U.S. D. Ct., E.D., Pa.).

K. ZONING

California: Defoe v. San Francisco Planning Commission, Civ. No. 30789 (Superior Ct., Calif.).

Michigan: Doe v. Damm, Complaint No. 627 (U.S. D. Ct., E.D., Mich.).

Minnesota: Anderson v. City of Shoreview, No. 401575 (D. Ct., Second Judicial District, Minn.), decided June 24, 1975.

New York: Village of Belle Terre v. Borass, 91 S.Ct. 1536 (1974).

Ohio: Boyd v. Gateways to Better Living, Inc., Case No. 73-CI-531 (Mahoning County Court of Common Pleas).

Ohio: Driscoll v. Goldberg, Case No. 72-CI-1248 (Mahoning County Ct. of Common Pleas, Ohio), 73 C.A. 49 (Ohio Court of Appeals, 7th District), decided April 9, 1974.

Wisconsin: Browndale International, Ltd. v. Board of Adjustment, 60 Wis.2d 182, 208 N.W.2d 121 (Wis. 1973), cert. denied, 94 S.Ct. 1933 (1974).